



WHITESPAN  
A d v i s o r y

# WINS

(WHITESPAN INFORMATION AND NEWS SERVICES)

A GATEWAY TO KNOWLEDGE

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Monthly Newsletter

**FROM THE CHIEF EDITOR'S PEN**

**“Unless you try to do something beyond what you have already mastered, you will never grow.”**

**— Ronald E. Osborn**

It gives us immense pleasure to share our 46<sup>th</sup> Edition of “WINS – e-newsletter” for February, 2021. My sincere gratitude to each one of you for sparing your valuable time in reading this newsletter and sharing your feedback. Your suggestions and ideas have been a source of inspiration for us and have motivated and guided us to scout for better contents in timely manner, month after month. Hope we not only help you to keep yourself updated but will also save your time by bringing a brief summary of the updates in the form of Editor's Quick Take.

In this issue we have covered the following:

1. Corporate Updates from MCA, RBI, SEBI, CBDT, CBEC and other miscellaneous laws
2. Articles on:
  - i. **Corporate Social Responsibility under the Companies Act, 2013**
  - ii. **Serious Fraud under the Companies Act, 2013**
  - iii. **Summary of Latest Judgement under the Income Tax Act**
3. Compliance checklist for the month of February 2021.

We hope all these would be of your interest and use.

We take this opportunity to invite articles on topics of professional interest. Please ensure that the article is original, written in good style and adds value for the readers.

Your candid feedback is valuable: appreciation will encourage us; criticism will help us to improve!

Feedbacks can be sent at [vinayshukla@whitespan.in](mailto:vinayshukla@whitespan.in)

with Warm Regards

**WINS (Whitespan Information and News Services)**

**January 31, 2021**

**OUR EDITORIAL BOARD COMPRISES THE FOLLOWING PROFESSIONALS**

1. **Mr. Vinay Shukla** - Vinay is a fellow member of The Institute of Company Secretaries of India (ICSI), a graduate in Law, Commerce and Management and the co-founder of WsA having more than thirty years' experience in wide spectrum of corporate functions.
1. **Ms. Jaya Yadav** - Jaya is a practicing company secretary based at Gurgaon is a fellow member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce from Delhi University.
2. **Mr. Himanshu Gupta** - Himanshu is an associate member of The Institute of Company Secretaries of India (ICSI) and a graduate in Law and Commerce.
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4. **Ms. Divya Shukla** - Divya is a graduate in Law and Commerce from Christ University, Bengaluru.

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# Ministry of Corporate Affairs (MCA)

## **1. Clarification on Spending of CSR Funds for Awareness and Public Outreach on COVID-19 Vaccination Programme- Reg**

**Date of General Circular- January 13, 2021**

**Effective Date – January 13, 2021**

**Link : [http://www.mca.gov.in/Ministry/pdf/CSR2021\\_13012021.pdf](http://www.mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf)**

MCA vide its general circular dated January 13, 2021, in continuation to its general circular no. 10/ 2020 dated March 23, 2020 clarified that spending of CSR Funds for carrying out awareness programmes/ campaigns or public outreach campaigns on COVID-19 vaccination programme are eligible CSR activity under item no. i, ii and xii of schedule VII of the Companies Act, 2013 relating to promotion of health care and sanitization, promoting education and disaster management respectively.



## **2. Scheme of condonation of delay for Companies restored on the Register of Companies between December 01, 2020 to December 31, 2020 under Section 252 of the Companies Act, 2013**

**Date of General Circular- January 15, 2021**

**Effective Date – January 15, 2021**

**Link :** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3\\_15012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3_15012021.pdf)

MCA vide its general circular dated January 15, 2021 has introduced “the Scheme of condonation of delay for Companies restored on the Register of Companies between December 01, 2020 to December 31, 2020 under Section 252 of the Companies Act, 2013” for the purpose of condoning the delay in filing forms with the Registrar, in so far as it relates to charging of additional fees on account of delay in such filings.

**Key highlights of the scheme are:**

**Applicability:** Companies which got order u/s 252 of the Act for restoration of the name of the company between 01 December 2020 to 31 December 2020.

**Duration of the Scheme:** Starting from 01 February 2021 to 31 March 2021.

**Eligible forms:** All E-forms except E-Form SH-7 and charge related forms (E-forms CHG-1, CHG-4, CHG-8 and CHG-9).

**Applicable Fees:** Normal filing fees during the applicability of the scheme.

### **3. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021**

**Date of Notification- January 22, 2021**

**Effective Date –Date of publication in the official gazette**

**Link :** [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3\\_15012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.3_15012021.pdf)

MCA vide its notification dated January 22, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 by notifying the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. Key highlights of this amendment are:

#### **Rule 2 Definitions**

Following new definitions have been added to the rules:

- i. Administrative overheads
- ii. International organization
- iii. Ongoing project
- iv. Public authority
- v. Section

Following definitions have been amended:

- i. Corporate Social Responsibility (CSR)
- ii. Net profit
- iii. CSR Policy



**Rule 4**  
**CSR**  
**Implementation**

The Board to ensure that CSR activities are undertaken by the company either itself or through –

- i. Section 8 company
- ii. A registered public trust
- iii. A registered society, registered under section 12A and 80 G of the Income Tax Act
- iv. Any entity established under an Act of Parliament or a State legislature;

\*Bodies at point no. i, ii and iii may be established by either of the following:

- i. By the company, either singly or along with any other company
- ii. By the Central Government or State Government
- iii. Having an established track record of at least three years in undertaking similar activities

Every entity covered above which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

International Organization as defined in Rule 2 of the Rule can also be engaged for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

The Board of a company shall ensure that the funds disbursed for CSR have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

**5  
CSR  
Committees**

The CSR Committee has been entrusted to formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy including:

- (a) The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- (b) The manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) The modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) Monitoring and reporting mechanism for the projects or programmes; and
- (e) Details of need and impact assessment, if any, for the projects undertaken by the company:

The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

**7  
CSR  
Expenditure**

Administrative overheads not to exceed five percent of total CSR expenditure of the company for the financial year.

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Where a company spends an amount in excess of the requirement provided such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- (ii) the Board of the company shall pass a resolution to that effect.

**7**  
**CSR**  
**Expenditure**

**Capital Asset:**

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –

- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority:

Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

**8. CSR**  
**Reporting**

The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR as per the format provided.

In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR

**Impact Assessment**

Every company having average CSR obligation of ten crore rupees or more in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

<b>Display of CSR activities on its website</b>	- The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access
<b>Transfer of unspent CSR amount</b>	Until a fund is specified in Schedule VII for the purposes of subsection (5) and(6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act

## **4. Commencement of Sections of the Companies (Amendment) Act, 2020**

**Date of Notification- January 22, 2021**

**Effective Date – January 22, 2021**

**Link :** <http://ebook.mca.gov.in/Default.aspx?page=notification>

MCA vide its notification dated January 22, 2021 has notified the commencement of following Sections of the Companies (Amendment) Act, 2020:

Section no. as per the Companies (Amendment) Act, 2020	Section no. as per the Companies Act, 2013	Section Head
2	2 (52)	Definition
11	62	Further issue of share capital
18(C )	89(11)	Declaration in Respect of Beneficial Interest in any Share
22(ii)	117	Resolutions and agreements to be filed
25	Insertion of new section 129A	Periodic financial results
27	135	Corporate social responsibility
53	379	Application of Act to Foreign Companies
55	Insertion of new section 393A	Exemption under Chapter XXII
58-60 (Both inclusive)	410, 418A and 435	Constitution of Appellate Tribunal, Staff of Tribunal and Appellate Tribunal and Establishment of Special Courts
62	446B	Factors for determining level of punishment
64 and 65	452 and 454	Punishment for wrongful withholding of property and Adjudication of penalties

## **5. Commencement of Sections of the Companies (Amendment) Act, 2019**

**Date of Notification- January 22, 2021**

**Effective Date – January 22, 2021**

**Link : <http://ebook.mca.gov.in/Default.aspx?page=notification>**

MCA vide its notification dated January 22, 2021 has notified the commencement Section 21 of the Companies (Amendment) Act, 2019.

Corresponding Section for Section 21 of the Companies (Amendment) Act, 2019 is Section 135 of the Companies Act, 2013 which pertains to the Corporate Social Responsibility.

## **6. Relaxation on Levy of Additional Fees in Filling of form AOC 4, AOC4(CFS), AOC4 (XBRL) and AOC4 NON (XBRL) for the FY ended on March 31, 2020 under the Companies Act, 2013**

**Date of Notification- January 28, 2021**

**Effective Date – January 28, 2021**

**Link : [http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.4\\_29012021.pdf](http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.4_29012021.pdf)**

MCA vide its notification dated January 28, 2021 has extended the due date for filling of form AOC 4, AOC4(CFS), AOC4 (XBRL) and AOC4 NON (XBRL) for the FY ended on March 31, 2020 under the Companies Act, 2013 till February 15, 2021.

During the said period only normal fee shall be payable for filling of the aforementioned e-forms.



## **7. The Companies (Incorporation) Amendment Rules, 2021**

**Date of Notification- January 25, 2021**

**Effective Date – Date of publication in the Official Gazette**

**Link : <http://ebook.mca.gov.in/Default.aspx?page=notification>**

MCA vide its notification dated January 25, 2021 notified the Companies (Incorporation) Amendment Rules, 2021. From now on in case of conversion of a public company into a private company Regional Director shall record all objections in writing and consequent upon hearing (To be held within 30 days) direct the Company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application within 30 days from the date of hearing.

In case no consensus is received, the Regional Director may approve the conversion if he is satisfied that the conversion would not be against the interests of the Company or is not being made with a view to contravene or to avoid complying with the provisions of the Act, with reasons to be recorded in writing.

Conversion shall not be allowed if any inquiry, inspection, or investigation has been initiated against the company or any prosecution is pending against the Company under the Act.

## **8. Clarification on holding of AGM through Video Conferencing (VC) or Other Audio Visuals Means (OVAM)**

**Date of Notification- January 13, 2021**

**Effective Date – January 13, 2021**

**Link : <http://ebook.mca.gov.in/Default.aspx?page=notification>**

MCA vide its general circular no. 02. 2021 dated January 13, 2021 in continuation to its General Circular No. 20/ 2020 dated May 05, 2020 extended the permission to hold AGM through VC/ OVAM till December 31, 2021 in accordance with the requirements provided in paragraph 3 and 4 of the General Circular No. 20/ 2020.



# **Securities Exchange Board of India (SEBI)**

## **1. Amendment to Regulation 20(6) of SEBI (AIF) Regulations, 2012**

**Date of Circular- January 08, 2021**

**Effective Date – January 08, 2021**

**Link: [https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-amendment-to-regulation-20-6-of-sebi-aif-regulations-2012\\_48710.html](https://www.sebi.gov.in/legal/circulars/jan-2021/circular-on-amendment-to-regulation-20-6-of-sebi-aif-regulations-2012_48710.html)**

SEBI vide its circular dated January 08, 2021 has amended Regulation 20(6) of SEBI (AIF) Regulations, 2012 by insertion of the following:

“Provided further that clauses (i) and (ii) shall not apply to an Alternative Investment Fund in which each investor other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager, has committed to invest not less than seventy crore rupees (or an equivalent amount in currency other than Indian rupee) and has furnished a waiver to the Alternative Investment Fund in respect of compliance with the said clauses, in the manner specified by the Board.”

Format of above mentioned waiver forms is available at:

[https://www.sebi.gov.in/sebi\\_data/commndocs/jan-2021/Format%20of%20waiver%20to%20be%20provided%20by%20the%20investors\\_p.pdf](https://www.sebi.gov.in/sebi_data/commndocs/jan-2021/Format%20of%20waiver%20to%20be%20provided%20by%20the%20investors_p.pdf)

## **2. Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the CoVID -19 Pandemic**

**Date of Circular : January 15, 2021**

**Effective Date : January 15, 2021**

**Link: [https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic\\_48790.html](https://www.sebi.gov.in/legal/circulars/jan-2021/relaxation-from-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-due-to-the-covid-19-pandemic_48790.html)**

SEBI vide its circular dated January 15, 2021 has in respect of sending physical copies of annual report to shareholders and requirement of proxy for general meetings held through electronic mode extended the timeline for the same to December 31, 2021.

### **3. The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2021.**

**Date of Circular- January 08, 2021**

**Effective Date – date of their publication in the Official Gazette**

**Link: [https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2021\\_48709.html](https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2021_48709.html)**

SEBI vide its notification dated January 08, 2021 amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. Key highlights of the amendment are:

Addition of events/information, upon the occurrence of which a listed entity shall make the disclosure to the stock exchange the events in relation to the Corporate Insolvency Resolution Process (CIRP) of a listed Corporate Debtor under the Insolvency Code.

(i) Pre and Post net-worth of the company; (ii) Details of assets of the company post CIRP; (iii) Details of securities continuing to be imposed on the companies' assets; (iv) Other material liabilities imposed on the company; (v) Detailed pre and post shareholding pattern assuming 100% conversion of convertible securities; (vi) Details of funds infused in the company, creditors paid-off; (vii) Additional liability on the incoming investors due to the transaction, source of such funding etc.; (viii) Impact on the investor – revised P/E, ROWN ratios etc.; (ix) Names of the new promoters, key managerial persons(s), if any and their past experience in the business or employment. In case where promoters are companies, history of such company and names of natural persons in control; (x) Brief description of business strategy.



#### **4. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2021**

**Date of Circular- January 08, 2021**

**Effective Date – date of their publication in the Official Gazette**

**Link: [https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2021\\_48704.html](https://www.sebi.gov.in/legal/regulations/jan-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2021_48704.html)**

SEBI vide its notification dated January 08, 2021 has amended the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018:

**Key highlights of the amendment are:**

Regulation 112- Requirement of minimum promoters' contribution not applicable in certain cases

Requirements of minimum promoters' contribution shall not apply in the case where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least 3 years immediately preceding the reference date, and the issuer has redressed at least 95% of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date. Further, the requirement shall not apply in the case where the issuer has been in compliance with the SEBI-LODR for a minimum period of 3years immediately preceding the reference date.

Regulation 167 - Lock-in

Addition of a new proviso under Regulation 167 which deals with lock-In and restriction on transferability in which the equity shares issued on a preferential basis pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank of India or a resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016, shall be locked-in for a period of one year from the trading approval but the lock-in provision shall not be applicable to the specified securities to the extent to achieve 10% public shareholding.



## **5. Relaxations relating to procedural matters –Issues and Listing**

**Date of Circular- January 19, 2021**

**Effective Date – January 19, 2021**

**Link: [https://www.sebi.gov.in/legal/circulars/jan-2021/relaxations-relating-to-procedural-matters-issues-and-listing\\_48812.html](https://www.sebi.gov.in/legal/circulars/jan-2021/relaxations-relating-to-procedural-matters-issues-and-listing_48812.html)**

SEBI vide its circular dated January 19, 2021 has in continuation to its Circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020 granting one time relaxation from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening extended this relaxation from July 31, 2020 to March 31, 2021 subject to the condition that the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020.



# **Reserve Bank of India (RBI)**

## **1. Introduction of Legal Entity Identifier for Large Value Transactions in Centralised Payment Systems**

**Date of Notification- January 05, 2021**

**Effective Date – April 01, 2021**

**Link: [https://www.rbi.org.in/Scripts/BS\\_CircularIndexDisplay.aspx?Id=12010](https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12010)**

RBI vide its notification dated January 05, 2021 has introduced the LEI system for all payment transactions of value ₹50 crore and above undertaken by entities (non-individuals) using Reserve Bank-run Centralised Payment Systems viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide. It was conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative and non-derivative markets as also for large corporate borrowers.

In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (<https://www.ccilindia-lei.co.in>), which is also recognised as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007.

## **2. Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021**

**Date of Notification- January 08, 2021**

**Effective Date – Date of publication in the official Gazette.**

**Link: <https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=12014&Mode=0>**

RBI vide its notification dated January 08, 2021 notified the Foreign Exchange Management (Export of Goods and Services) (Amendment) Regulations, 2021 by amending regulation no. 4 (Exemptions) of the Foreign Exchange Management (Export of Goods & Services) Regulations, 2015:

“Notwithstanding anything contained in Regulation 3, export of goods / software may be made without furnishing the declaration in the following cases, namely:

(ea) re-export of leased aircraft/helicopter and/or engines/auxiliary power units (APUs), either completely or in partially knocked down condition re-possessed by overseas lessor and duly de-registered by the Directorate General of Civil Aviation (DGCA) on the request of Irrevocable Deregistration and Export Request Authorisation (IDERA) holder under ‘Cape Town Convention’ or any other termination or cancellation of the lease agreement between the lessor and lessee subject to permission by DGCA/Ministry of Civil Aviation for such export/s.”



# **Central Board of Excise and Customs (CBEC)**

## **1. The Customs Authority for Advance Rulings Regulations, 2021**

**Date of Notification: January 04, 2021**

**Effective Date:** Date of publication in the Official Gazette

**Link:** <https://abcaus.in/excise-custom/customs-authority-for-advance-rulings-regulations-2021.html>

Ministry of Finance vide its notification dated January 04, 2021 has notified the Customs Authority for Advance Rulings Regulations, 2021. The language of the Authority shall be Hindi or English.

Where any document is in a language other than Hindi or English, a Hindi or English translation thereof duly attested shall be filed along with the original document. The regulations provide for the following:

- i. Powers of the Authority
- ii. Powers and functions of Secretary
- iii. Form and manner of application before Authority for Advance Ruling
- iv. Procedure for filing applications
- v. Procedure on receipt of application
- vi. Appeal against advance ruling
- vii. Form and manner of appeal to Appellate Authority





# Central Board of Direct Taxes (CBDT)



## **1. Faceless Penalty Scheme, 2021**

**Date of notification- January 12, 2021**

**Effective date - January 21, 2021**

**Link:** [https://www.incometaxindia.gov.in/communications/notification/notification\\_no\\_2\\_2021.pdf](https://www.incometaxindia.gov.in/communications/notification/notification_no_2_2021.pdf)

CBDT vide its notification dated January 12, 2021 laid down the directions for the Faceless Penalty Scheme, 2021. The penalty under this Scheme shall be imposed in respect of such territorial area, or persons or class of persons, or income or class of income or cases or class of cases, or penalties or class of penalties as may be specified by the Board.

For the purposes of this Scheme, the Board may set up —

- i. A National Faceless Penalty Centre
- ii. Regional Faceless Penalty Centres
- iii. Penalty units, as it may deem necessary
- iv. Penalty review unit

All communication among the penalty unit and penalty review unit or with the assessee or any other person, as the case may be, or any income-tax authority or the National Faceless Assessment Centre, with respect to the information or documents or evidence or any other details as may be necessary for the purposes of imposing penalty under this Scheme, shall be through the National Faceless Penalty Centre.

# Miscellaneous Laws

## **1. Retention of Records Relating to Corporate Insolvency Resolution Process**

**Date of Circular- January 04, 2021**

**Effective Date – January 04, 2021**

**Link: <https://ibbi.gov.in/uploads/legalframework/5bb3be107809847f06cf2059f54ff3c8.pdf>**

IBBI vide its circular dated January 04, 2021 has directed as under:

- i. An IP shall preserve copies of records generated in electronic form for a minimum period of eight years, from the date of completion of the CIRP or the conclusion of any proceeding relating to CIRP, before the Adjudicating Authority (AA), Appellate Authority or Court, or any matter pending with the Board, whichever is later.
- ii. For records other than (i) above, the IP shall maintain copies for minimum period of three years in physical form, and for minimum period of eight years in electronic form, from the date of completion of the CIRP or the conclusion of any proceeding relating to CIRP, before the Adjudicating Authority (AA), Appellate Authority or Court, or any matter pending with the Board, whichever is later.
- iii. An IP shall preserve the records at a secure place and ensure that unauthorised persons do not have access to the same.
- iv. An IP shall preserve records relating to that period of a CIRP which he has handled, irrespective of the fact that he did not continue the assignment till its conclusion.

## **2. Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021**

**Date of Notification- January 14, 2021**

**Effective Date – Date of publication in the Official Gazette**

**Link: <https://www.ibbi.gov.in/uploads/legalframework/d4ee22fc271516082e29f7c93d39c4b3.pdf>**

IBBI vide its notification dated January 14, 2021 has amended the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 by insertion of the following to it:

A shareholder director shall be an individual, who satisfies the eligibility norms, including experience and qualification, as decided by the Governing Board.

A director shall disclose any order of any authority that affects his character or reputation, to the insolvency professional agency, within one week of issue of such order: Provided that a copy of the order shall be placed forthwith on the website of the insolvency professional agency;

Provided further that such director shall forthwith cease to be a director of the insolvency professional agency where the order disqualifies him to be a director of a company.

### **Self-evaluation.**

(1) The Governing Board shall evaluate its performance in a financial year within three months of the closure of the year, in the manner decided by it.

(2) The insolvency professional agency shall publish a report on self-evaluation referred to in sub-regulation (1) on its website.

**Compliance Officer.**

- (1) An insolvency professional agency shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the Code and regulations, circulars, guidelines, and directions issued thereunder.
- (2) The compliance officer shall, immediately and independently, report to the Board any non-compliance of the provisions referred to in sub-regulation (1).
- (3) The compliance officer shall submit a compliance certificate to the Board annually, verifying that the insolvency professional agency has complied with the provisions referred to in sub-regulation (1):  
    Provided that the annual compliance certificate shall also be signed by the managing director of the insolvency professional agency.
- (4) The Governing Board shall appoint or remove the compliance officer only by means of a resolution passed in its meeting

### **3. Startup India Seed Fund Scheme (SISFS)**

**Date of Notification- January 21, 2021**

**Effective Date – January 21, 2021**

**Link: <https://www.startupindia.gov.in/>**

Ministry of Commerce and Industry, Department for Promotion of Industry and Internal Trade) vide its notification dated January 21, 2021 has notified the Startup India Seed Fund Scheme (SISFS) to provide financial assistance to startups for proof of concept, prototype development, product trials, market entry and commercialization. SISFS shall provide financial assistance to startups via corpus of Rs. 945 Crore that will be disbursed through selected incubators across India in 2021-25. The scheme is sector-agnostic and will support startups across all sectors. The scheme shall have a central common application on Startup India portal for startups and incubators on an ongoing basis. SISFS will be implemented by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India. The Guidelines of the above-mentioned scheme is available on the website of Startup India at <https://www.startupindia.gov.in/>.

# Article 1



## **CORPORATE SOCIAL RESPONSIBILITY UNDER COMPANIES ACT, 2013**

### **I. HISTORY OF CSR PROVISIONS:**

In line with the national endeavour of inclusive growth, Corporate Social Responsibility (CSR) was conceived in corporate business for integrating social, environmental and human development concerns. Timeline towards mainstreaming the concept of Business Responsibilities is as under:-

- i. 2007:** Adoption of Inclusive Growth-11<sup>th</sup> Five Year Plan
- ii. 2009:** Voluntary guidelines on CSR, 2009
- iii. 2010:** Parliamentary Standing Committee on Finance - 21st Report on Companies Bill, 2009
- iv. 2011:** National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business , 2011
- v. 2012:** Business Responsivity Reporting
- vi. 2014:** Mandatory provision of CSR in Section 135 of the Companies Act 2013 w.e.f., 1<sup>st</sup> April, 2014
- vii. 2017:** The Companies (Amendment) Act, 2017
- viii. 2020:** The Companies (Amendment) Act, 2020
- ix. 2021:** Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

Section 135 of the Companies Act 2013 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 are governing provisions of the CSR.

## **II. APPLICABILITY:-**

The following class of companies shall constitute a CSR Committee-

- Net worth of Rs 500 crores or more; or
- Turnover of Rs. 1000 crores or more; or
- Net Profit of Rs. 5 crores or more,
- during the immediately preceding financial year.

### **Composition of committee:**

- Three or more directors, out of which at least one director shall be an independent director,
- Where company is not required to appoint an independent director it shall have in its CSR Committee two or more directors.

Board report shall disclose the composition of CSR committee.

## **III. CSR EXPENDITURE**

**At least two per cent. of the average net profits** made during the three immediately preceding financial years,

**OR**

Where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.

#### **IV. The Companies (Amendment) Act, 2020:**

The following amendments in Section 135 had been notified by Ministry of Corporate Affairs (MCA) vide its notification dated January 22, 2021:-

- **Section 135(5)** – Allowed the Set off for excess amount, spent pursuant to CSR obligation. And the provisions for the same has been notified in Rule 7 of the **Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021**
- **Section 135(7)** – The penalty provision for non-compliance of sub-section (5) or sub-section (6) of section 135 has been notified.
- **Section 135(9)** - Constitution of the CSR Committee is not required, if amount to be spent **does not exceed fifty lakh rupees** and the functions of such Committee shall be discharged by the Board of Directors.

#### **V. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021(Amendment Rule)**

The MCA vide its notification dated January 22, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 (hereinafter referred to as “principle rule”). Major amendments have been made in the principle rule, brief analysis of the same is:-

## **Rule 2 – Definitions:**

### **Following new definitions have been added to the principle rule:**

- i. Administrative overheads
- ii. International organization
- iii. Ongoing project
- iv. Public authority

### **Following definitions have been amended:**

- i. Corporate Social Responsibility (CSR)
- ii. Net profit
- iii. CSR Policy

### **Brief Analysis:**

#### **1. Administrative overheads:-**

- Means the expenses incurred for ‘general management and administration’ of CSR functions,
- Expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme are excluded,
- And as per new substituted Rule 7 of Amendment Rule, Administrative overheads should not to exceed five percent of total CSR expenditure of the company for the financial year.

**2. The most awaited definition of “Ongoing Project” has been added:-**

- Means a Multi-year project for fulfilment of CSR obligation,
- Having timeline not exceeding three years, excluding the financial year in which it was commenced, and
- Includes project whose duration has been extended beyond one year by the board based on reasonable justification.

**3. The definition of CSR has been amended:-**

- Earlier the definition is inclusive.
- Now the definition have been made exclusive and the following activities have been specifically excluded form the purview of the definition of CSR:-
  - i. Activities in normal course of business.  
Exception:- R&D of new vaccine related to COVID-19 from financial year 2020 to financial year 2023 subject to certain conditions.  
{Earlier this proviso has been added in the definition of CSR policy by Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020.}
  - ii. Activity undertaken outside India.  
Exception:- training of Indian sports personnel representing any State or Union territory at national level or India at international level;
  - iii. Contribution, directly or indirectly, to any political party under section 182 of the Act;

- iv. Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
- v. Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- Vi Activities carried out for fulfilment of any other statutory obligations under any law in force in India;

#### **4. CSR policy:**

- Earlier the definition only talks about the activities specified in Schedule VII and exclude the activities of normal course of business.
- Now, the definition considers the approach of the board, recommendations of its CSR Committee, and includes the guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

**5. From the definition of Net Profit, this proviso has been deleted:** “Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956 (1 to 1956) shall not be required to be re-calculated in accordance with the provisions of the Act”

**B. The old Rule 4(CSR Activities) is substituted with the new Rule 4(CSR Implementation). Key points of the later are following:-**



1. CSR activities are to be undertaken by the company either itself or through –

- i. Section 8 company
- ii. A registered public trust
- iii. A registered society, registered under section 12A and 80 G of the Income Tax Act
- iv. Any entity established under an Act of Parliament or a State legislature;

\*Bodies at point no. i, ii and iii may be established by either of the following:

- i. By the company, either singly or along with any other company
- ii. By the Central Government or State Government
- iii. Having an established track record of at least three years in undertaking similar activities

2. A new **E-form CSR-1** has been introduced:-

❖ **Registration:-**

- Every entity covered above which intends to undertake any CSR activity shall register itself by filing this form;
- With effect from the 01<sup>st</sup> April 2021,
- Earlier approved CSR projects or programmes would not be affected;

❖ E-form have to be verified by a professional;

❖ A unique CSR Registration Number will be generated automatically on submission.

3. International Organization have been allowed for designing, monitoring and evaluation of the CSR projects or programmes.

4. Companies are allowed to collaborate with other companies for undertaking projects or programmes or CSR activities as specified.
5. The Board shall ensure proper CSR funds disbursement.
6. In case of **ongoing project**, Board shall monitor the implementation with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

**Sub-rule (2) of Rule 5 has been substituted with a new sub-rule:-**

**Annual Action Plan:-**

- ❖ Earlier as per sub-rule 2, CSR Committee has obligation only to institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
- ❖ Now as per new substituted rule, The CSR Committee has been entrusted to formulate and recommend to the Board, an **annual action plan** in pursuance of its CSR policy which includes:
  - a) The list of approved CSR projects or programmes as specified in Schedule VII of the Act;
  - b) The manner of execution of such projects or programmes as specified; The modalities of utilisation of funds and implementation schedules for the projects or programmes;
  - c) Monitoring and reporting mechanism for the projects or programmes; and
  - d) Details of need and impact assessment, if any, for the projects undertaken by the company:

**The Board can alter such plan at any time during the financial year, subject to recommendation of its CSR Committee and reasonable justifications.**

**D. Rule 6(CSR Policy) has been omitted.**

**E. The old Rule 7(CSR Expenditure) is substituted with the new Rule 7(CSR Expenditure). Key points of the later are following**

- ❖ Administrative overheads should not exceed five percent of total CSR expenditure of the company for the financial year.
- ❖ Surplus arising out of the CSR activities:-
  - Shall not form part of the business profit of a company;
  - Shall be ploughed back into the same project,
  - Or transfer to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company,
  - Or transfer to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.
- ❖ **Spend in excess of the requirement:-** Excess amount has been allowed to set off up to immediate succeeding three financial years subject to the conditions that –
  - the excess amount available for set off shall not include the surplus arising out of the CSR activities;
  - Pass a Board resolution to that effect.

❖ **Capital Asset:**

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –

- a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
- b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- c) a public authority:

Any capital asset created by a company prior to the commencement of Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule.

Extension may be given for not more than 90 days with the approval of the Board based on reasonable justification.

**F. The old Rule 8(CSR Reporting) is substituted with the new Rule 8(CSR Reporting). Key points of the later are following:-**

❖ **Annual Report:-**

- The Board's Report shall include an annual report on CSR as per the format prescribed.
- In case of a **foreign company**, the balance sheet filed under section 381(1)(b) of the Act, shall contain an annual report on CSR.

- ❖ **Impact Assessment :-** Every company having average CSR obligation of ten crore rupees or more in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

A Company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

**G. The old Rule 9(Display of CSR activities on its website) is substituted with the new Rule 9(Display of CSR activities on its website). Key points of the later are following**

- ❖ The Board of Company shall mandatorily disclose on their website, if any, following:-
  - Composition of the CSR Committee, and
  - CSR Policy and Projects approved by the Board.

**H. New Rule 10(Transfer of unspent CSR amount):** The unspent CSR amount shall be transferred by the company to any fund included in schedule VII of the Act, until a fund is specified in Schedule VII for the purposes of section 135(5) and (6) of the Act.

**Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.**

**Authors:**

**Ms. Garima Bansal**  
**Whitespan Advisory**



# Article 2



## **SERIOUS FRAUD UNDER THE COMPANIES ACT, 2013**

### **Meaning of Fraud**

Fraud is an abuse of position, or false representation, or prejudicing someone's right for personal gain. In simple words, fraud is an act of deception intended for personal gain or to cause a loss to another party. It includes deception whereby someone knowingly makes false representation; or they fail to disclose information; or they abuse a position. The definition of fraud under the Companies Act, 2013 and punishment thereof is defined under Section 447 of the Companies Act, 2013.

### **Section 447. Punishment for Fraud**

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud <sup>1</sup>[involving an amount of at least ten lakh rupees or one per cent, of the turnover of the company, whichever is lower] shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

<sup>1</sup>[ Provided further that where the fraud involves an amount *less than ten* lakh rupees or one per cent of the turnover of the company, whichever is lower, *and does not involve public* interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to <sup>4</sup>[<sup>3</sup>[<sup>2</sup>[fifty lakh rupees]]].

**Explanation.**—For the purposes of this section—

- (i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- (ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;
- (iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

It is clear from the definition itself that “Fraud” is divided in to two categories in terms of its gravity, i.e. First, when involving of an amount is at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower and involve Public interest then imprisonment is at least three years which may extends to ten years and Fine which shall not be less than the amount involved which may extends to three times the amount involved in the fraud.

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#### Amendments

1. Inserted by The Companies (Amendment) Act, 2017, effective from 9<sup>th</sup> February, 2018
2. Substituted by the Companies (Amendment Ordinance, 2018, dated 2.11.2018  
In section 447 of the principal Act, in the second proviso, for the words” Twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.  
Substituted by the Companies (Amendment) Ordinance dated 12.01.2019 [Companies (Amendment) Ordinance 2018 is repealed on 12<sup>th</sup> January, 2019]
4. Substituted by the Companies (Amendment) Act, 2019, effective from 2<sup>nd</sup> November, 2018[Companies (Amendment) Second Ordinance 2019 is repealed on 31<sup>st</sup> July, 2019]

The Second category is, when fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees.

It is clarified that “Fraud” of second category, which are punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees, are compoundable with the permission of the Special Court in terms of section 441(6)(a) of Companies Act, 2013. As against, the “Fraud” of first category which are punishable with imprisonment and Fine are not compoundable.

### **Why the Fraud is categorised as “Serious”**

There are various grounds which indicate that the provisions under section 447 cover the ‘Serious Fraud’, namely:-

1), The provisions which attract the punishment for fraud provided in section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

*In Siddhartha Chauhan v. Serious Fraud Investigation Office, CRM-M-38926-2019, Punjab & Haryana High Court at Chandigarh Date of Decision 13.11.2019.* As regards imposing twin conditions for granting bail under section 212(6) of the Act, the Hon’ble Court has come to the conclusion that the language of the twin conditions requires impossibility from the court, besides defying the human logic in its operational functionality.

*In Aditya Kumar Bhandari vs. Serious Fraud Investigation...., Bail Application No.639/2020, Delhi High Court order dated 14.05.2020. The Hon'ble High Court agreed with the twin mandatory conditions for granting bail, relying with the Hon'ble Supreme Court order in the matter of Dipak Shubhash chanddra Mehta v. CBII 2012) \$ SCC 134; P. Chidambaram v. Directorate of Enforcement .*

*In Serious Fraud Investigation ...vs. Nitin Johri, Criminal Appeal No.1381 of 2019 (@S.L.P.(CRL.) No.7437 of 2019. (Criminal Appellate Jurisdiction), Supreme Court of India Date of Decision 12<sup>th</sup> September, 2019. The Hon'ble Supreme Court noted that even as per Section 212(7) of Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the Cr.P.C. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the Cr.P.C. Specifically, heed must be paid to the stringent view taken by this Court, towards grant of bail with respect of economic offences. Reliance was placed in the matter of Y.S.Jagan Mohan Reddy, Gautam Kundu vs. Directorate of Enforcement (Prevention of Money Laundering Act), Government of India,(2015) 16 SCC 1, and State of Bihar v. Amit Kumar,(2017) 13 SCC 751. Thus, it is evident that the above factors must be taken into accounts while determining whether bail should be granted in cases involving grave economic offences (para 11). The Hon'ble Supreme Court is of considered opinion, the vague observation demonstrates non application of mind on the part of the Court even under Section 439 of Cr.P.C, even if it keep aside the question of satisfaction of the **mandatory requirements under section 212(6)(ii)** of the Companies Act (Para 13). The Hon'ble Supreme Court held that in the interest of justice, it deem fit to remand the matter to the high Court to reconsider Bail Application in the light of the principles governing the grant of bail under Section 439 of the Cr.P.C. while also keeping in mind the scope and effect of the twin mandatory conditions for grant of bail laid down in Section 212(6)(ii) of the Companies Act;*



- 2) The Serious Fraud Investigation Office has powers to arrest under section 212(8) of the Companies Act, 2013;
- 3). As well when involving of an amount is at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower and involve Public interest then imprisonment is at least three years which may extends to ten years and Fine which shall not be less than the amount involved which may extends to three times the amount involved in the fraud. *In Aditya Kumar Bhandari vs. Serious Fraud Investigation...., Bail Application No.639/2020, Delhi High Court order dated 14.05.2020.* The Hon'ble Court observed that section 447, if fraud is proved, the accused shall be punishable with imprisonment for a term which shall not be less than six months but which may extend up to ten years and fine not less than the amount involved.

Thus, in view of the above, fraud under section 447 of the Companies Act, 2013 is considered 'Serious Fraud'.

**Please feel free to contact the undersigned in case you require any further information/ clarification on the above article.**

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# Article 3



**Summary of Latest Judgement under the Income Tax Act :**

- 1. Interest on refund-** When an order of refund is issued, it should include the interest payable on the amount which is refunded. If the refund does not include the interest due payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest. **(Favour of Assessee) Commissioner of Income Tax Vs. Syndicate Bank, 7<sup>th</sup> Oct. 2020, Karnataka High Court.**
- 2. Deemed Dividend - Sum shown as unsecured loan obtained by the assessee's firm from company in which one partner is shareholder of the lender company.-** The records placed before Assessing Officer showed the nature of transaction between assessee and company . It was neither a loan nor an advance, but a deferred liability. The payment had been made to the assessee , a Firm, which was not a shareholder in the company. These facts had been noted by the assessing officer. The Tribunal rightly reversed the order passed by the CIT(A) affirming the order of the assessing officer. **(Favour of Assessee) Commissioner of Income Tax Vs. T.Abdul Wahid and Co. , 21<sup>st</sup> Sep. 2020, Madras High Court.**
- 3. Business Loss** - The assessee was not a dealer in foreign exchange , but was a exporter of cotton. Therefore the Tribunal rightly took note of the transaction done by the assessee where, in order to hedge against loss, the assessee booked foreign exchange in the forward market with the bank. However , the export contracts entered into by the assessee for the export of the cotton in some cases failed and therefore, the assessee was entitled to claim deduction in respect of the amount as business loss. **(Favour of Assessee) Commissioner of Income Tax Vs. Celebrity Fashion Ltd. , 21<sup>st</sup> Sep. 2020, Madras High Court.**

- 4. Charitable Purpose Expenses** - All the pilgrims who visited assessee's temple were served with "Prasadam" without probing into their caste, creed, religion or nationality. Thus , expenditure had definitely been incurred on a section of society and therefore, was tantamount to expenditure for a charitable purpose. the assessee was rightly granted exemption u/s 11. **(Favour of Assessee) Director of Income Tax ( Exemption ) and another Vs. Iskcon Charities, 15<sup>th</sup> Sep.2020, Karnataka High Court.**
- 5. Indexed cost of Acquisition of Land-** considering the profits on sale of land without given the benefit of indexed cost of acquisition results in taxing the income other than actual or real income. A mere book keeping entry cannot be treated as income. The Assessee had to be given the benefit of indexed cost of acquisition. **(Favour of Assessee) Best Trading and Agencies Ltd. Vs. Deputy Commissioner of Income Tax, 26<sup>th</sup> August 2020, Karnataka High Court**
- 6. Exemption of purchase of two residential houses on different location.-**The court had interpreted the expression "a residential house" and the interpretation that it included the plural were binding. Therefore the order passed by Assessing Officer, CIT(A) and The Tribunal in so far as they deprived the assessee for the benefit of exemption u/s 54(1) were to be quashed. **(Favour of Assessee) Arun K. Thigarajan Vs. Commissioner of Income Tax (Appeal) and Others, 18<sup>th</sup> June 2020, Karnataka High Court**
- 7. Business Expenditure** - Every application of income towards the business objective of assessee is business expenditure. Source of fund from which expenses were made not relevant. **(Favour of Assessee) National Co-operative Development Corporation Vs. Commissioner of Income Tax, 11<sup>th</sup> September 2020, Supreme Court**

- 8. Unexplained Investment:** Property Purchase, Disclosed in ITR, this was accepted, subsequently revision order passed and addition made u/s 69 on the ground that difference in value in sale deed and stamp value(separate payment other than sale deed). Held there was nothing on record to indicate that what was the price of land at the relevant time, even otherwise it was a question of fact. this was allegation of department without any supporting. the addition was not justified. further section 69 is not applicable to section 50C. **(Favour of Assessee) Gayatri Enterprise Vs. Income Tax Officer, 20.08.2019 (Gujarat High Court)**
- 9. Reassessment–** Amount Assessed in block Assessment u/s 158BC, CIT(A) Deleted the addition, Department filled appeal before Tribunal against the order passed by the CIT(A). And department also issue a notice u/s 147/148 stating that the same income had escaped assessment. Since there was full disclosure and in fact, the amount had even become the subject matter of the assessment both u/s 158BC and 143(3), there could have been no reason to believe that the income chargeable to tax had indeed escaped assessment. the notice of reassessment was not valid.. **(Favour of Assessee) Audhut Timblo and Others Vs. ACIT, 27.11.2019, ( Bombay High Court)**
- 10. Notice in the name of dead person:** Notice in the name of dead person not a valid notice, Mere intimation by the legal representative that noticee is dead , would not amount to participation in reassessment proceeding. **(Favour of Assessee) Urmilaben Anirudhhasinhji Jadeja Vs. Income Tax Officer , 27.08.2019, ( Gujarat High Court )**
- 11. Further Notice's in the name of legal heir:** The Assessing Officer issuing Notice u/s 148 dated 27th March 2018, in the name of deceased assessee for reopening the assessment u/s 147 for the assessment year 2011-12. Though the petitioner , the deceased assessee's wife, brought all these facts to the notice of the department, the Assessing Officer Issued further notice dated 29 August 2018 under section 142(1).

The notice for reopening of the assessment against a dead person was invalid. The notice was to be set aside and the order of reassessment was to be annulled. **(Favour of Assessee) Rupa Shyamsundar Dhumatkar Vs. ACIT, 05.04.2019, (Bombay High Court)**

**12. Search and Seizure** : In the absence of any incrimination material found in the course of search at group concerns , Assessment u/s 143(3) has already concluded on the date of search, AO could not be revisited for making assessment u/s 153A without any incrimination material found in the course of search at group concerns. **(Favour of Assessee) Sel Manufacturing Co. Ltd VS. DCIT, ITA No. 157 to 161 & 303/Chd/2018, dated 28.02.2019 ( ITAT – Chandigarh )**

**13. Notice in the name of Amalgamating Company** – Expenditure incurred on interior decoration of leasehold office premises are allowable as revenue expenditure. **(Favour of Assessee) Snowhill Agencies (P) Ltd. Vs. Pr. CIT , ITA No. 1775/Ahd/2019 , dated 21.01.2020 ( ITAT – Ahmedabad )**

**14. Failure to get account audited:** Assessee civil contractor was following project completion method but recognised revenue on partial completion method at the instance of search party was not required to maintain any books of accounts hence there could not be any penalty u/s 271B for failure to get accounts audited u/s 44AB. Because as per project completion method , there was no turnover and assessee was not required to maintain books of accounts hence there could not be any penalty u/s 271B for failure to get accounts audited. **(Favour of Assessee) Harshwardhan Vs. DCIT , 404-416/Bang/2019, dated 29.01.2020 (ITAT – Bangalore )**

**15. Reduction in Share Capital is Long-Term Capital Loss:** Reduction of capital by a company amounts to transfer u/s 2(47) and therefore, the loss arising to the assessee on cancellation of its shares in its subsidiary pursuant to reduction of capital by that company is allowable as long-term capital loss eligible to be carried forward to subsequent years. **(Favour of Assessee) Carestream Health Inc. Vs. DCIT, 826/Mum/2016, dated 06.02.2020 ( ITAT – Mumbai )**

**Please feel free to contact the undersigned in case you require any further information/ clarification on the above article**

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# Compliance Checklist



## Compliance Calendar for February 2021

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28						

### Income Tax Related Compliances

- Due date for deposit of Tax deducted/collected for the month of January 2021. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
  - Due date for issue of certificate for tax deducted under section 194-IA , Section 194-IB , Section 194 M for the month of December, 2020
  - Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of January, 2021 has been paid without the production of a challan
  - Due date for filing of return of income for the assessment year 2020-21 if the assessee is (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or (d) required to submit a report under section 92E pertaining to international or specified domestic transaction(s)
- Note: The due date for submission of return of income for the Assessment Year 2020-21 has been further extended to February 15, 2021 vide Press Release, dated 30-12-2020

### FEMA Related Compliances

Reporting of actual transactions of External Commercial Borrowings (ECB) through AD Bank under FEMA

### RBI Related Compliances

- Monthly return (NBS-6) on exposure to capital market
- Monthly Return on Important Financial Parameters
- Monthly statement of short term dynamic liquidity in Form ALM-I

### Economic, Industrial & Labour Law Related Compliance

- Monthly payment of PF (Non-Corporate)
- File monthly return (Form No.5) for employees leaving /joining during the previous month
- File monthly Return of employees entitled for membership of Insurance Fund (Form No.2(IF))
- File monthly Return for members of Insurance Fund leaving service during the previous month (Form no. 3(IF))
- File monthly return of members joining service during the previous month (Form no.F4(PS))

- Monthly return of PF for the previous month
- Monthly return of PF for the previous month with respect to international workers

- Payment of ESI Contribution for the month of December

### GST Related Compliance

- GSTR 1(Monthly) for January 2021
- GSTR 3B for January 2021

### Companies Act Related Compliance

- Extended Due date for filing of e-forms AOC-4, AOC -4 (CFS), AOC-4 XBRL and AOC-4 Non- XBRL for the year ended 31.03.2020.

## **FOR FURTHER INFORMATION PLEASE CONTACT:**

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